

# MEMORANDUM

January 24, 2007

TO: THE LOS ANGELES COUNTY CLAIMS BOARD

FROM: WARREN R. WELLEN  
Principal Deputy County Counsel  
Public Works Division

MICHAEL MOORE  
Deputy County Counsel  
Public Works Division

RE: Stiefler v. County of Los Angeles, et al.  
Los Angeles Superior Court Case No. SC 087897

DATE OF  
INCIDENT: February 26, 2005

AUTHORITY  
REQUESTED: \$400,000

COUNTY  
DEPARTMENT: Department of Public Works

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## CLAIMS BOARD ACTION:

☐ Approve

☐ Disapprove

☐ Recommend to Board of  
Supervisors for Approval

\_\_\_\_\_, Chief Administrative Office  
**ROCKY A. ARMFIELD**

\_\_\_\_\_, County Counsel  
**JOHN F. KRATTLI**

\_\_\_\_\_, Auditor-Controller  
**MARIA M. OMS**

on \_\_\_\_\_, 2007

## SUMMARY

This is a recommendation to settle for \$400,000 the claims of Jeffrey E. Stiefler, as Trustee for the Jeffrey E. Stiefler Trust and as an individual, and Suzanne Stiefler ("Stieflers") against the County of Los Angeles ("County") and Los Angeles County Waterworks District No. 29 ("District") arising from landslide damage to their residential property located in the City of Malibu.

## LEGAL PRINCIPLES

A public entity is liable in inverse condemnation when real property is damaged and the public entity's public improvements, as designed and constructed, are a substantial contributing cause of that damage.

A public entity is liable for property damage caused by its negligent failure to maintain a public improvement.

A public entity is liable for damages for nuisance if it causes obstruction to the free use of property or obstructs or interferes with enjoyment of that property.

## SUMMARY OF FACTS

The Stieflers own a home located on Ramirez Canyon Road, a private road, in the City of Malibu. The Stieflers' house and infinity pool sit atop a pad cut out of and overlooking a steep canyon slope, commanding a view of the Pacific Ocean.

The District owns and maintains the water system serving the properties on Ramirez Canyon Road. The relevant section of the water system was privately designed, and constructed, and then dedicated to the District. The County does not own or maintain any improvements on Ramirez Canyon Road.

Prior to the rainy season of 2004-2005, there was evidence of land movement in the area that caused minor damage. There were private and public water leaks, including a water main break that was repaired by the District and put back into service.

In September and October 2004, the Stieflers repeatedly reported that the water main under Ramirez Canyon Road was leaking. District personnel investigated the reports and determined that the District's water main was not leaking and the meter was not creeping.

The 2004-2005 rainy season (October 1 through April 30) produced the second highest amount of annual rainfall in Los Angeles County in recorded history.

In January and February 2005, the District's water main broke three more times in the area of the slide. The District repaired each break and put the water main back into service.

On February 26, 2005, there was significant movement of the landslide. The District's water main broke for a fifth time. The water main was not repairable and Ramirez Canyon Road became impassable. The District replaced the water main with an above-ground fire hose which continues as the water system as of the present time.

As a result of the landslide, the Stieflers' property suffered significant damage to the slope under the house and pool. The City of Malibu red-tagged the property.

On June 15, 2005, the Stieflers filed tort claims against the County and District which were denied. On December 9, 2005, the Stieflers filed a lawsuit in Superior Court against the County, the District, and the Department of Public Works alleging causes of action for inverse condemnation, trespass, negligence, and nuisance.

On February 23, 2006, Homeland Insurance Co. ("Homeland"), filed a subrogation lawsuit against the County, the District, and the Department of Public Works. Homeland participated in the first mediation and agreed to pay the Stieflers \$150,000. Homeland dismissed its lawsuit against the County and the District with prejudice on September 6, 2006.

## DAMAGES

If the Stieflers prevail at trial under the theory of inverse condemnation, they would be entitled to recover the lesser of the cost to repair or the diminution in property value resulting from the landslide. Since the house is red-tagged it is considered a total loss and the cost to repair should be less than the estimated \$5 million value of the house. They would also be entitled to recover their attorney fees, expert fees, prejudgment interest, and damages for loss of use.

If the Stieflers prevail at trial under a tort theory, they would be entitled to recover all of their economic damages and non-economic damages, such as emotional distress, less any proportion of fault attributed to the Stieflers, based on excessive irrigation, a leaking septic system and improper grading.

The theories of liability pled by the Stieflers are not mutually exclusive. A finding at trial of both inverse condemnation and tort liability is permissible, although they may not recover twice for the same damage.

We expect the Stieflers to seek the following damages at trial:

Cost to Repair	\$2,100,000
Loss of Use	\$ 11,000
Emotional Distress	\$1,000,000
Attorneys and Expert Fees	\$ 750,000
<u>Prejudgment Interest</u>	<u>\$ 570,000</u>
TOTAL	\$4,431,000

## STATUS OF CASE

Trial in this matter is set for April 23, 2007. The parties attended a mediation on August 31, 2006, and again on December 12, 2006, before Mediator Ross Hart, at which time they agreed upon the proposed settlement.

The County and District have incurred litigation costs to date totaling approximately \$183,000. This includes in-house attorney fees of approximately \$99,000, and expert witness fees and litigation costs of approximately \$84,000. In the event that this matter proceeds to trial, we expect litigation costs to rise to \$750,000.

## EVALUATION

### Inverse Condemnation

The District's exposure lies in whether a court would determine that the repeated breaks of the District's water main was a substantial cause of the damage to the Stieflers' property. The five breaks did spill an indeterminate amount of water into the landslide. There is evidence that reported water pooling was caused by ground saturation from the water main leaking. There is also evidence that the water main had been slowly leaking since 1998. Evidence of improper grading by the developer, the Stieflers' excessive irrigation, and record rainfall will be generally acknowledged by the experts as contributing factors. Our expert's opinion that the landslide would have occurred, even in the absence of a water main leak, would establish a defense to inverse condemnation liability if accepted by the court.

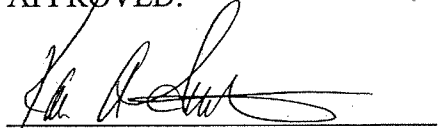
Notwithstanding the facts available in defense of this lawsuit, we believe that it is more likely than not the court will find that the water from the District's water main was a substantial causal factor. The case law interprets substantial cause to be something slightly more than, "slight, trivial, negligible, or theoretical."

### Tort Claims

The District's water main broke five times in two years. Each of the first four breaks was repaired and the underground main was put back in service in the unstable slope. The Stieflers' emotional distress claims are based on witnessing the land falling away from underneath their home, the fear that the entire home would be lost to the slide, and watching their home be red-tagged. The Stieflers, particularly Ms. Stiefler, will make sympathetic witnesses.

Given the considerable risks and costs associated with a jury trial, we recommend that this case be settled in the amount of \$400,000. The Department of Public Works concurs with this recommendation.

APPROVED:



KAREN A. LICHTENBERG  
Assistant County Counsel  
Public Works Division

KAL:WRW:gm

## DEPARTMENT OF PUBLIC WORKS

### CORRECTIVE ACTION PLAN

Facility: LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 29, MALIBU  
RAMIREZ CANYON ROAD 8-INCH-DIAMETER WATER MAIN

Name: Stiefler v. County of Los Angeles, Et Al.

Case No.: Los Angeles Superior Court, Case No. SC 087 897

#### **RISK MANAGEMENT ISSUES**

DATE	ISSUES
<input checked="" type="checkbox"/> Systems <input type="checkbox"/> Personnel	<p>In 1990, an 8-inch underground water main was privately designed and constructed to provide residential water service and fire protection to 5872 Ramirez Canyon Road (subject property) and three additional properties as part of the required water system improvements for Parcel Map No. 19173. The water main was dedicated to the District and is located in a private street. In February 21 to 24, 2005, a landslide damaged the subject property owned by Jeff and Suzanne Stiefler (Stieflers) and our 8-inch water main.</p> <p>On November 7, 2005, the Stieflers filed suit against the County of Los Angeles and the Los Angeles County Waterworks District No. 29, Malibu (District) alleging causes of action for inverse condemnation, negligence, trespass and nuisance. The settlement is proposed for economic reasons.</p>

## CORRECTIVE ACTION PLAN

Stieflers v. County of Los Angeles, Et Al.

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### INVESTIGATIVE SUMMARY

DATE	INVESTIGATION
	<p>The Stieflers own a large, upscale home at 5872 Ramirez Canyon Road (subject property) in a secluded, mountainous area of west Malibu. The house and pool sit on a pad overlooking a steep slope. In 1990, an 8-inch underground water main was privately designed and constructed to provide residential water service and fire protection to the subject property. The water main was dedicated to the District and is located in a private street.</p>
late 1980s/early 1990s	<p>The subject portion of Ramirez Canyon Road was developed and graded with consultation from engineering geologist Jeff Holt and geotechnical engineer Leonard Liston. The geotechnical analysis included serious errors, resulted in deficient grading work, and lead to the subject landslide in February 2005.</p>
From December 26, 2004, to February 27, 2005	<p>The County experienced intense rainstorms resulting in two Federally Declared Disasters (Disaster Nos. 1577 and 1585). On January 11, 2005, the water main broke and started leaking water. The District repaired the break and put the water main back in service. On February 21 and 24, 2005, the water main broke and was repaired by the District. On February 26, 2006, there was significant movement of the landslide which broke and separated the water main. The private road became impassable. The District took the water main out of service and replaced it with an above-ground 2-inch hose.</p>
March 18, 2005	<p>Jeff Holt authored a geology report which pins the blame for the landslide entirely on the water main. The report does not examine the impact of past grading activities, mention the record rainfall, explain the water generated from private sources such as irrigation and septic systems, or provide a slope stability analysis.</p>
March 24, 2005 to November 10, 2005	<p>The Stieflers have attempted to repair the landslide and contend that the street has been stabilized and repaired. The water main was replaced but has not been activated by the District due to the District's concerns with evidence of continued movement in the area. The District has proposed to install a permanent, above-ground 8-inch water main.</p>

## CORRECTIVE ACTION PLAN

Stieflers v. County of Los Angeles, Et Al.

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### CORRECTIVE ACTIONS (PERSONNEL)

Personnel Involved	Status/Time of Event	Current Status	Disciplinary Action Taken	Date Completed
			No personnel action is necessary. To facilitate future responses to similar incidents, the County has established a process to identify, monitor, and respond to areas of known land movement (see below).	

### CORRECTIVE ACTIONS (SYSTEMS)

System	Corrective Action	Date Completed
District's Water System	<p>To avoid the possibility of similar allegations in the future, the District will direct its field staff to consult with appropriate Geotechnical staff in instances where we have reason to believe there is a land movement.</p> <p>Breaks that are believed to be related to active land movement will be flagged for immediate investigation by Public Works' geologists. Based upon the results of a geotechnical analysis, the appropriate action will be taken.</p>	December 2006



## CORRECTIVE ACTION PLAN

Stieflers v. County of Los Angeles, Et Al.

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### CHRONOLOGY OF EVENTS

DATE	EVENTS
June 1, 1995	8-inch water main was privately designed and constructed as part of water system improvements for Parcel Map No. 19173.
1992 to 1994	House constructed at 5872 Ramirez Canyon Road.
1999	Pool constructed at subject property.
August 2001	Engineering geologist Jeff Holt observed cracking in the concrete garage slab of the subject property.
March 14, 2003, to May 9, 2003	Substantial leak occurred on the private irrigation system at subject property. These leaks were repaired by the Homeowner by May 15, 2003.
September 19, 2003	Stieflers purchased subject property. The previous owner moved out on December 8, 2003.
December 15, 2003	The 8-inch water main on Ramirez Canyon Road broke in fill material at the base of the eventual landslide. The break was repaired by the District on December 15 and 16, 2003.
December 22, 2003	Stieflers requested that water meter be turned on.
September 16, 18, and 27, and October 4 and 5, 2004	Stieflers placed several calls to the District alleging that the water main on Ramirez Canyon Road was leaking and water was pooling on the driveway.
October 5, 2004	District personnel determined that there was no leak on the District main and water meter was not creeping.
October 14, 2004	District suggested to the Stieflers to hire a private leak detection specialist to investigate the cause of their complaint.
December 26, 2004, to through January 12, 2005	County experienced intense rainstorms resulting in the first Federally Declared Disaster.
January 11, 2005	The 8-inch water main broke approximately 200 feet upstream from the 2003 location. The District repaired the break and put the water main back in service.

CORRECTIVE ACTION PLAN

**CHRONOLOGY OF EVENTS (CON'T)**

DATE	EVENTS
January 28 through February 26, 2005	Stieflers and other residents on Ramirez Canyon Road made multiple calls to the District to report water pressure and flow problem due to a water main break on the supply line to the Ramirez Canyon and the Stiefler's water main.
February 11 through March 28, 2005	County experienced intense rainstorms resulting in a second Federally Declared Disaster.
February 21, 2005	The 8-inch water main broke 20 feet downstream from the January 11, 2005, break in the area of the landslide and was repaired and put back into service.
February 24, 2005	The 8-inch water main broke 40 feet upstream of the January 11, 2005, break. The line was repaired and put back into service by the District.
February 26, 2005	Significant movement of the landslide occurred breaking the water main about 20 feet upstream of the February 24, 2005, break. The private road became impassable. The water main was taken out of service by the District and replaced with an above-ground 2-1/2-inch fire hose to provide water for services to the Ramirez Canyon customers.
March 18, 2005	Jeff Holt authored a geology report alleging that the water main caused the landslide. The report failed to examine the impact of past grading activities or mention the record rainfall or explain the water generated from sources such as irrigation and septic systems, or provide a slope stability analysis.
March 24, 2005, to November 10, 2005	Stieflers repaired the landslide. The 8-inch water main was replaced but has not been activated by the District due to concerns of continued land movement.
August 15, 2005	Site visit revealed that the house and slab have multiple cracks which have appeared recently.
November 7, 2005	Lawsuit filed against the County and District by Stieflers.
December 12, 2006	Proposed settlement agreement reached.